Calendar No. 844

97TH CONGRESS
2d Session

SENATE

REPORT
No. 97-576

THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1982

SEPTEMBER 23 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. DOLE, from the Committee on Finance, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1635]

[Together with cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (H.R. 1635) for the relief of the Jefferson County Mental Health Center, Lakewood, Colorado, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

The amendment is shown in the text of the bill in italic.

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I. SUMMARY

Relief of the Jefferson County Mental Health Center

H.R. 1635, as passed the House, authorizes the payment of $50,000 to the Jefferson County Mental Health Center, Lakewood, Colorado, in full settlement of its claim against the United States for repayment of social security taxes which the Center refunded to its employees after the Internal Revenue Service erroneously advised the Center that the taxes had been withheld erroneously.

The Committee on Finance approved the bill, with an amendment in the nature of a substitute [1]—the Educational Opportunity and Equity Act of 1982—summarized below.

Tuition Tax Credit Provisions

The bill provides a nonrefundable credit for 50 percent of tuition expenses paid to private elementary and secondary schools for certain qualified dependents of the taxpayer. The maximum credit is $100 in 1983, $200 in 1984, and $300 in 1985 and subsequent years. The maximum credit amount is phased down for taxpayers with adjusted gross incomes of greater than $40,000 and no credit is allowed for taxpayers with adjusted gross income of $50,000 or more.

For tuition expenses to be creditable, a school cannot follow a racially discriminatory policy. An eligible school will be required to include a statement of its nondiscriminatory policy in any published by-laws, admissions materials, and advertising, and to file annually with the Treasury Department a statement that it has not followed a racially discriminatory policy. Generally, a copy of this statement also will have to be furnished to each individual who pays tuition to the school and must be attached to any return on which credits are claimed. In addition, the bill disallows credits for payments to any school found to be following a racially discriminatory policy in an action brought by the Attorney General under the bill's declaratory judgment provisions.

The bill generally applies to tuition paid or incurred after July 31, 1983, for taxable years beginning after December 31, 1982; however, no credits will be allowed until either a final decision by the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under section 501(a) of the Internal Revenue Code by reason of section 501(c)(3) to private educational institutions that maintain a racially discriminatory policy or practice as to students. Credits will be effective on a prospective basis after such final decision or Act of Congress.

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[1] The substance of H.R. 1635 as passed by the House was included as section 290 of the Tax Equity and Fiscal Responsibility Act of 1982 (H.R. 4961), P.L. 97-248.

II. EXPLANATION OF THE BILL

A. Present Law

Tax benefits for educational expenses

Special rule for claiming dependency exemption for a child who is a student

In certain cases, taxpayers are entitled to a personal exemption for a dependent, which they otherwise could not claim, because the dependent is a student. Generally, a taxpayer may claim a $1,000 personal exemption for each dependent who has less than $1,000 gross income for a taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and is under the age of 19 or is a student (Code sec. 151).

Income tax exclusion for scholarships and fellowships

Individuals generally may exclude from income amounts received as scholarships and fellowships (Code sec. 117). The exclusion also covers incidental amounts received to cover expenses for travel, research, clerical help, and equipment when they are expended for these purposes. The exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration (e.g., promises of future services) from the recipient, except in the case of certain Federal grants. Similarly, where an educational institution allows delayed payment of tuition, the Internal Revenue Service regards tuition postponement to be a loan and, therefore, not includible as income to the student (Rev. Rul. 72-2, 1972-1 C.B. 19).

Deduction for "job-related" educational expenses

Education expenses which qualify as trade or business expenses under Code section 162 may be deducted. Expenditures made by an individual for his own education generally are deductible if they are for education which (1) maintains or improves skills required by the individual's employment or other trade or business or (2) meets the express requirements of the individual's employer or the requirements of applicable law or regulations imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation (Treas. Reg. sec. 1.162-5(a)). These types of education commonly are called "job-related" education.

Income tax exclusion for amounts received under educational assistance programs

For taxable years beginning after December 31, 1978, and before December 31, 1983, amounts paid by an employer for an employee's

educational expenses may be excluded from the employee's income if paid pursuant to a qualified educational assistance program (Code sec. 127). A qualified educational assistance program must be a separate written plan of an employer for the exclusive benefit of employees. The plan also must meet requirements with respect to nondiscrimination in contributions or benefits and in eligibility for enrollment, but it need not be funded or approved in advance by the Internal Revenue Service. For a program to qualify, the employees must be given adequate notification and must not be able to choose taxable benefits in lieu of the educational assistance.

Benefits which may be provided under the program include tuition, fees, and similar payments, books, supplies, and equipment. Covered studies need not be restricted to courses which are job-related or part of a degree program.[1] However, an employee claiming an exclusion under this section may not claim any other deduction or credit (e.g., a Code sec. 162 deduction for job-related education) with respect to any excludible benefits.

Other tax provisions of benefit to education

Some provisions that benefit education, in general, and sometimes students, in particular, include the exclusion from income of gifts (Code sec. 102), which may comprise a large portion of a student's support, and the charitable contribution deduction (Code sec. 170), which allows a deduction for charitable contributions (not tuition payments) to educational institutions. Other provisions, such as the exclusion of interest on State and municipal bonds (Code sec. 103) and the deduction for State and local taxes (Code sec. 164) indirectly assist publicly-supported educational institutions by easing the financial burden on State and local governments.

Effect of racial discrimination on tax-exempt status of private schools

The Internal Revenue Service issued a revenue ruling and a revenue procedure,[2] in 1971 and 1972, respectively, which state that private schools with racially discriminatory policies as to students will not be recognized as organizations exempt from Federal income tax. These documents also set forth guidelines for determining whether certain private schools have adequately publicized their racially nondiscriminatory policies so as to enable them to qualify for tax-exempt status.

In 1975, the IRS published Revenue Procedure 75–50, 1975–2 C.B. 587, which sets forth guidelines and recordkeeping requirements for determining whether private schools have racially nondiscriminatory policies. This revenue procedure superseded Rev. Proc. 72–54, *supra*.

In general, the 1975 guidelines provide that to obtain recognition of tax-exempt status under section 501(c)(3):

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[1] Generally, however, no exclusion is permitted for educational assistance furnished for courses involving sports, games, or hobbies.

[2] Rev. Rul. 71–447, 1971–2 C.B. 230 and Rev. Proc. 72–54, 1972–2 C.B. 834. These documents were issued in response to *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C.) aff'd per curiam sub nom. *Coit* v. *Green*, 404 U.S. 997 (1971), which held that racially discriminatory private schools are not entitled to the Federal tax exemption provided for educational organizations and that gifts to such schools are not deductible as charitable contributions by the donors.

(1) A school must include a statement in its charter, by-laws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and, therefore, does not discriminate against applicants.

(2) the school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships;

(3) the school must make its racially nondiscriminatory policy known to all segments of the general community served by the school;

(4) the school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner; and

(5) as a general rule, all scholarships or other comparable benefits procurable for use at the school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be made known throughout the general community being served by the school and should be referred to in the publicity necessary to satisfy the third requirement in order for that school to be considered racially nondiscriminatory as to students.

This revenue procedure also requires that an individual authorized to act officially on behalf of a school which claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, that to the best of his knowledge and belief the school has satisfied the requirements listed in the procedure.

The 1975 Revenue Procedure further provides that the existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students, while conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students. Failure to comply with the guidelines set forth in Revenue Procedure 75–50 ordinarily results in the proposed revocation of the tax-exempt status of a school.

Through provisions enacted as part of annual appropriations legislation, the Congress has forbidden the Internal Revenue Service to develop or carry out any rulings, procedures, or other positions concerning tax exemption for racially discriminatory private schools beyond those that were in effect prior to August 22, 1978.[3] The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the U.S. Supreme Court in the cases of *Goldsboro Christian Schools,*

[3] This prohibition was enacted in response to the fact that on August 21, 1978, the Internal Revenue Service announced prospective publication of a revenue procedure intended to revise administrative guidelines for determining whether a private school operates in a racially discriminatory manner. As a result of the reopening of litigation in *Green* v. *Connally,* supra, and *Wright* v. *Miller,* 480 F. Supp. 790 (D.D.C. 1979), rev'd sub nom. *Wright* v. *Regan,* 656 F. 2d 820 (D.C. Cir. 1981), the IRS had concluded that its prior revenue procedures had not been effective in identifying schools that were discriminatory on the basis of race, even though they had professed an open enrollment policy and had complied with the requirements of Revenue Procedure 75–50.

Inc. v. *United States* (No. 81-1) and *Bob Jones University* v. *United States* (No. 81-3).

B. Reasons for Change

The committee is concerned with the rising cost of tuition at private elementary and secondary schools. At the same time, the cost of public schools is rising and taxes continue to increase to meet this cost. Parents who send their children to private schools, however, relieve the public schools of the cost of educating their children. The committee believes that such parents, who must pay for the increased costs of both public and private schools, should receive tax relief for their children's educational expenses. The committee also feels that private schools represent an integral part of American society, reflecting the diversity of the country, and providing citizens with important opportunities to obtain the education they deem best suited to individuals' needs and family values. By assisting citizens to select and pay for private school education, the tax relief provided by this bill will reinforce and sustain the Nation's historic pattern of diversity in education. The committee also believes that the existence of affordable alternatives to public education tend to strengthen public education through competition. This healthy competition should improve the educational opportunities for all Americans.

The committee believes that tax benefits should not be available with respect to racially discriminatory schools. The committee intends that the special nondiscrimination provisions of this bill supplement any nondiscrimination standards that must be satisfied in order for a private school to obtain Federal tax exemption. Neither the substantive nondiscrimination standards of the bill nor its enforcement procedures, are intended to create any inference with regard to any nondiscrimination standards or enforcement procedures that may be applicable under present law. However, the committee's bill provides that no tuition tax credits will be available until a final decision by the Supreme Court of the United States or an Act of Congress prohibits the granting of tax-exempt status under Code section 501(a) by reason of section 501(c)(3) to private educational institutions that maintain a racially discriminatory policy or practice as to students.

C. Explanation of Provisions

Congressional findings

The bill contains a policy statement that sets forth several propositions that are based upon a Congressional finding that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. This policy statement concludes that the primary purpose of the bill is to enhance equality of educational opportunity, diversity, and choice for all Americans and that the bill will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

Credit for tuition expenses

Under the bill, an individual is allowed to claim a nonrefundable tax credit for 50 percent of the tuition expenses paid during the taxable year to one or more eligible private educational institutions for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions. Provided that over half of his or her support is received from the taxpayer, the payment of tuition expenses for (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, stepbrother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or her principal place of abode the home of the taxpayer and who is a member of the taxpayer's household, will qualify for the credit. Except for the taxpayer's children, these individuals must have less than $1,000 of gross income for the calendar year in order to be claimed as dependents.

Eligible educational institutions and qualified tuition expenses

The credit will be available only with respect to tuition paid to certain educational institutions. An educational institution must meet a number of requirements in order for tuition paid to it to be a creditable expense.

The institution must provide a full-time program of elementary or secondary education. While, ordinarily, a vocational high school that offers a regular academic secondary school curriculum in addition to vocational courses will qualify, a school that offers only vocational courses, such as stenographic courses, will not.

The institution must be a privately operated, not-for-profit, day or residential school. The school also must be exempt from taxation under Code section 501(a) as an organization described in section 501(c)(3).[4] Under the bill, church schools that currently are exempt from the requirement that they notify the Internal Revenue Service of their applications for recognition of tax-exempt status will continue to be exempt.

While the bill does not require a private school to have by-laws, advertisements, admission application forms, or other such publications, if an institution does have any such publications they must include a statement that the institution does not discriminate against applicants or students on the basis of race. The form or manner for making this statement is to be prescribed by Treasury Regulations. Forms, brochures, and other publications printed before the effective date of this bill but distributed or used after that date must be amended or "stickered" with an appropriate statement of non-discrimination.

An eligible educational institution must not have an admissions policy that discriminates against handicapped children. The bill sets forth guidelines for determining whether a school has an ad-

[4] These are organizations that are organized and operated exclusively for religious, charitable, educational, or other enumerated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.

missions policy that discriminates against handicapped children.[5] Under the bill, a school has an admissions policy that discriminates against handicapped children if it refuses to admit otherwise qualified applicants solely on the basis of their status as handicapped children. Because the committee does not believe that private schools should be required to undertake substantial additional costs in order to admit handicapped children, however, the bill further provides that a school which denies admission to any handicapped child will not be treated as having an admissions policy that discriminates against handicapped children if such denial results from the fact that the school does not have special programs and courses, special facilities, specially qualified personnel, or an adequate staff to accommodate the handicapped child. For example, where a school has a small number of teachers qualified to teach emotionally disturbed children, but has no special classes for the emotionally disturbed and is unable, without taking the specially qualified teachers away from other duties, to provide such classes, it may deny admission to applicants with emotional handicaps that prevent their full participation in regular classes.

Finally, attendance at the school must satisfy the requirements of any law of the State in which it is located, or in which a student resides, which requires children to attend school. A school, attendance at which satisfies the compulsory education laws of the state in which a student resides, need not satisfy the compulsory education laws of the state in which the school is located for such student's parents to claim a credit.

Tuition expenses eligible for the credit are tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including fees for courses. However, amounts paid for (1) books, supplies, and equipment for courses of instruction; (2) meals, lodging, transportation, or personal living expenses; (3) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; and (4) education beyond the twelfth-grade level are not eligible for the credit.

Limitations on credit amount

The credit will be subject both to a maximum dollar amount and a phase-out based upon the amount of a taxpayer's adjusted gross income. Both the maximum dollar amount of the credit and the maximum phase-out rate will be phased in over a three-year period.

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent will be:

(1) $100 in the case of tuition expenses paid or incurred after July 31, 1983, in taxable years beginning in 1983;

(2) $200 in the case of tuition expenses paid or incurred after December 31, 1983, in taxable years beginning in 1984; and

(3) $300 in the case of tuition expenses paid or incurred after December 31, 1984, in taxable years beginning in 1985 or later.

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[5] For purposes of this requirement, the term "handicapped children" is defined in section 602(1) of the Education of the Handicapped Act and means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

However, any tuition tax credits available to any taxpayer may not be taken into account in determining the estimated tax of such taxpayer for any taxable year begining before January 1, 1984 or in determining the number of withholding exemptions to which any taxpayer is entitled with respect to remuneration paid before January 1, 1984.

The maximum credit amount will be reduced by a specified percentage of the amount by which a taxpayer's adjusted gross income for the taxable year exceeds $40,000 ($20,000 in the case of a married individual filing a separate return). The phase-out rate will be 1.0 percent for taxable years beginning in 1983; 2.0 percent for taxable years beginning in 1984, and 3.0 percent for taxable years beginning in 1985 and thereafter. These percentage phase-out rates are doubled for married individuals filing separate returns. Thus, a taxpayer with adjusted gross income of $50,000 or more ($25,000 in the case of a married individual filing a separate return) will receive no tax credit.

Special rules

Under the bill, otherwise eligible tuition expenses will be reduced by certain amounts paid to the taxpayer or his dependents. These amounts are: (1) amounts received from tax-free scholarships or fellowship grants; (2) certain Veterans benefits; and (3) other tax-exempt educational financial assistance (except for excluded gifts, bequests, devises, or inheritances). If the scholarship is paid directly to the school and the school sends a bill for tuition to the taxpayer that is net of the scholarship, the taxpayer is not deemed to have been paid the scholarship; the scholarship is excluded from the computation of tuition expense.

Anti-discrimination provisions

No tax credit will be permitted for tuition payments to schools that follow racially discriminatory policies.

Under the bill, an educational institution follows a racially discriminatory policy if it refuses, on account of race (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs. In administering its scholarship, loan, athletic or other programs, a school may not classify students on the basis of race. A racially discriminatory policy does not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term "race" includes color or national origin.

A school will be required to file annually with the Treasury Department a statement declaring that it has not followed a racially discriminatory policy and also indicating whether a judgment declaring that the school has followed a racially discriminatory policy is in effect. The statement also must indicate whether the school has complied with the requirement that it include a statement of nondiscriminatory policy in its published by-laws, application forms, advertising, etc. Except as otherwise provided in Treasury Regulations, the nondiscrimination statement must be furnished to each person who pays tuition to the school, and a taxpayer claim-

ing the credit must attach a copy to his return. It is anticipated, for example, that regulations may provide that such statement need not be provided to parents who certify to the school that they will not claim a credit for tuition paid to such school.

Declaratory judgment proceedings

The bill provides that, upon the filing of an appropriate pleading by the Attorney General, the district court of the United States for the district in which a school is located will have jurisdiction to make a declaration with respect to whether such school follows a racially discriminatory policy. This declaration will have the force and effect of a final judgment of the district court and will be reviewable as such.

Under the bill, the Attorney General is authorized and directed to seek a declaratory judgment against a school after receiving a written allegation of discrimination filed by a complainant against the school and finding good cause. This written allegation must allege with specificity that the school has committed a racially discriminatory act against a student applicant or student within one year preceding the date on which the allegation is made, or that the school has made a communication within one year preceding the date on which the allegation is made, expressing that the school follows a racially discriminatory policy.

The Attorney General is required, upon receipt of a written allegation, promptly to notify the school, in writing, of the existence of the allegation. Before commencing a declaratory judgment action, the Attorney General also is required to give the school a fair opportunity to comment on the allegations made against it by the complainant and to show that the racially discriminatory policy alleged in the written allegation either does not exist or has been abandoned.

If the Attorney General decides not to seek a declaratory judgment against the school, he must make available to the complainant the information on which the Attorney General based his decision, including any relevant information submitted by the school. He is not required or authorized, however, to make available any information the disclosure of which violates any Federal or State law protecting personal privacy or confidentiality. The Attorney General must also notify the complainant of the availability of this information.

The bill provides that a district court may declare that a school follows a racially discriminatory policy, in a declaratory judgment action, only if the Attorney General establishes that:

(1) The school has, pursuant to such policy, committed a racially discriminatory act against a student applicant or student within the two years preceding commencement of the action;

(2) The school has, within two years preceding commencement of the action, made a communication expressing that it follows a racially discriminatory policy against student applicants or students; or

(3) The school has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of the action.

Any district court that makes a declaration that a school follows a racially discriminatory policy will retain jurisdiction of the case.

Instead of filing a declaratory judgment action, the Attorney General may, at his discretion, enter into a settlement agreement with a school against which an allegation of discrimination has been made. However, before doing so, the Attorney General must find that the school has been acting in good faith and has abandoned its racially discriminatory policy. A copy of any settlement agreement must be furnished to the complainant whose allegations resulted in the Attorney General's investigation. If the school violates the settlement agreement, then no subsequent allegation need be filed before the Attorney General can initiate a declaratory judgment proceeding, or bring an action to enforce the terms of the settlement. The committee anticipates that settlement agreements may provide that a violation of the terms of the settlement will constitute an act in furtherance of a pattern of conduct intended to implement a racially discriminatory policy. Thus, violation of the terms of a settlement could lead promptly to a declaratory judgment disallowing credits.

In describing the requirements for making an allegation of discrimination, the requirements for prevailing in a declaratory judgment action against a school, and other requirements, the bill's references to a communication made by a school are intended to include communications of employees, officers, or agents of the school that express that the school follows a racially discriminatory policy. In describing the requirements for prevailing in a declaratory judgment action against a school, the bill's reference to an action pursuant to a racially discriminatory policy is not intended to create any inference that a single act of discrimination, without more, could not constitute evidence of a racially discriminatory policy.

Attorneys fees

The bill authorizes the district court to award costs and reasonable attorneys fees to a school prevailing in a declaratory judgment proceeding brought by the Attorney General. The committee anticipates that the courts will not award attorneys fees where circumstances would make such an award unjust. However, it is anticipated that the courts will take into account the financial burden that may be imposed on a private school in defending against a declaratory judgment action under this bill.

Discontinuance of racially discriminatory policy

The bill provides that a school against which a declaratory judgment has been rendered may, at any time after one year from the date of the judgment, file with the district court a motion to modify the judgment to include a declaration that the school no longer follows a racially discriminatory policy. This motion must contain affidavits that:

(1) Describe with specificity the ways in which the school has abandoned its previous racially discriminatory policy;

(2) Describe with specificity the ways in which the school has taken reasonable steps to communicate its policy of non-dis-

crimination to students, to faculty and school administrators, and to the public in the area that it serves;

(3) Avers that the school has not, during the preceding year, (a) committed a racially discriminatory act against an applicant or student pursuant to a racially discriminatory policy, (b) made a communication expressing that it follows a racially discriminatory policy against applicants or students, or (c) engaged in a pattern of conduct intended to implement a racially discriminatory policy and committed some act in furtherance of such policy; and

(4) Avers that the school has complied with the requirement that it indicate its nondiscriminatory policy in its published bylaws, advertisements, admission applications, etc. during the preceding year.

The motion by the school will be granted unless the Attorney General establishes that:

(1) An affidavit submitted by the school in support of the motion is false;

(2) The school has, within the preceding year, (a) committed a racially discriminatory act against an applicant or student pursuant to a racially discriminatory policy, (b) made a communication expressing that it follows a racially discriminatory policy against applicants or students, or (c) engaged in a pattern of conduct intended to implement a racially discriminatory policy and committed some act in furtherance of such policy.

(3) The school has not, in fact, complied with the nondiscrimination publication or communication requirements.

The committee anticipates that the requirement that a school take reasonable steps to communicate its nondiscriminatory policy will be satisfied if the school takes vigorous steps to make known its nondiscriminatory policy, which steps are reasonable in light of the school's financial resources.

Period of disallowance of tax credits

No credits will be allowed for amounts paid to a school during the period in which a declaratory judgment against the school is in effect. Generally, a declaratory judgment is in effect beginning with the calendar year in which it is entered by the district court, whether or not it is appealed. The period of disallowance ends only if a motion to reinstate credits is granted by the district court. In that event, credits are again allowed beginning with the year the motion is granted by the district court, whether or not that motion is appealed.

If a subsequent judgment (or appellate order requiring entry of judgment) is entered against the school, the reinstatement order will cease to be in effect. Similarly, if an order reinstating credits is reversed or vacated, that reinstatement order will cease to be in effect, and entry of the order reversing or vacating the reinstatement order will be treated as if it were a subsequent declaratory judgment against the school. In either event, credits will again be disallowed indefinitely, beginning with the year in which the subsequent judgment (or appellate order requiring entry of judgment) or odrer reversing or vacating a reinstatement order is entered. If an

appellate order reversing a reinstatement order is subsequently reversed, and the reinstatement order is upheld, then credits will be allowable from the year the valid reinstatement order was originally entered. In that event, the statute of limitations for filing a refund claim will be extended. If a district court judgment in favor of a school is reversed on appeal, the period of disallowance begins with the earlier of the calendar year in which a subsequent district court judgment against the school is entered on remand, or the calendar year in which the court of appeals entered an order that would require the district court to enter such a judgment. This rule is intended to prevent a delay in the beginning of the period of disallowance if a stay of such an appellate order is entered pending further proceedings. If all judgments against a school entered in an action are subsequently reversed or vacated, all credits disallowed on the basis of any district court judgments in the action will be allowable. However, credits for that period will not be allowed until the action is finally concluded. Accordingly, the period for filing a refund claim will be extended.

If a declaratory judgment against a school (or an appellate order requiring such a judgment) is entered but stayed, credits will not be disallowed until the stay is vacated, but the period of disallowance will begin with the year in which the judgment or order is entered. Accordingly, the statute of limitations for determining deficiencies will also be extended in that event. The committee anticipates that stays will be entered only in extraordinary circumstances where the school demonstrates the traditional requirements for obtaining a stay pending appeal.[6] In the committee's view, this strict standard is appropriate, inasmuch as the effect of a stay in this context is tantamount to the effect of an order restraining the assessment or collection of taxes.[7]

Enforcement responsibility

The bill vests the Attorney General with exclusive authority to investigate and, prior to bringing an action, to determine whether an educational institution if following a racially discriminatory policy under the provisions of this bill. However, the Secretary of the Treasury is directed to provide the Attorney General with any information relevant to his investigations and actions which the Attorney General requests or the Secretary wishes to provide.

Reports by Attorney General

The bill requires the Attorney General to report annually to the Congress on his anti-discrimination enforcement activities. These reports should include a description of all activities undertaken pursuant to petitions filed with the Attorney General.

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[6] See *Virginia Petroleum Jobbers Association* v. *Federal Power Commission*, 104 App. D.C. 106, 259 F. 2d 921 (1958).

[7] See Section 7421, Internal Revenue Code of 1954, *Enochs* v. *Williams Packing & Navigation Co.*, 370 U.S. 1 (1962).

Credit not to be considered as Federal assistance

The bill provides that tuition tax credits will not constitute Federal financial assistance to educational institutions or the recipients thereof.

D. Effective Date

The bill is generally effective for tuition payments made after July 31, 1983. However, no credits will be available until either a final decision of the Supreme Court of the United States or an Act of Congress prohibits the granting of a tax exemption under Code section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students.

E. Revenue Effect

It is estimated that the bill will reduce budget receipts by $229 million in fiscal year 1984, $491 million in fiscal year 1985, $703 million in fiscal year 1986, and $726 million in fiscal year 1987.

III. COSTS OF CARRYING OUT THE BILL AND VOTE OF THE COMMITTEE IN REPORTING H.R. 1635

Budget Effects

In compliance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the budget effects of H.R. 1635, as reported.

Budget receipts

The table below summarizes the estimates of decreases in budget receipts from the allowance of tuition tax credits provided by the bill for fiscal year 1983–1987:

FISCAL YEAR

[Millions of dollars]

1983	1984	1985	1986	1987
0	−229	−491	−703	−726

The Treasury Department agrees with this statement.

Budget outlays

The bill involves no new budget outlays.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 1635, as amended, was ordered favorably reported by a rollcall vote of 11 ayes and 7 nays.

IV. REGULATORY IMPACT OF THE BILL AND OTHER MATTERS TO BE DISCUSSED UNDER SENATE RULES

Regulatory Impact

Pursuant to paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of this bill.

A. *Numbers of individuals and businesses who would be regulated.*—The bill does not involve new or expanded regulation of individuals or businesses.

B. *Economic impact of regulation on individuals, consumers and businesses.*—The bill does not involve economic regulation.

C. *Impact on personal privacy.*—This bill does not relate to the personal privacy of individual taxpayers.

D. *Determination of the amount of paperwork.*—The bill will increase paperwork for educational institutions to which the payment of tuition is eligible for credit and for individuals who are eligible to claim the credit. This additional paperwork results from the bill's requirement that eligible educational institutions must file annual nondiscrimination statements with the Treasury and that individuals claiming the credit must attach those statements to their Federal income tax returns.

Consultation with Congressional Budget Office on Budget Estimates

In accordance with section 403 of the Budget Act, the committee advises that the Director of the Congressional Budget Office has examined the committee's budget estimates and agrees with the methodology used and the resulting dollar amounts (as shown in Part III of this report).

[The Director submitted the following statement:]

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C.

Hon. ROBERT DOLE,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Budget Act, the Congressional Budget Office has examined H.R. 1635, as amended by the Committee on Finance. The original bill as passed by the House of Representatives provided for the relief of the Jefferson County Mental Health Center in Lakewood, Colo. The substance of H.R. 1635 was included as Section 290 of the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248). The Committee on Finance approved H.R. 1635 with an amendment in the nature of a substi-

tute—the Educational Opportunity and Equity Act of 1982. This bill will provide a taxpayer with qualified dependents a nonrefundable credit for 50 percent of tuition expenses paid to private elementary and secondary schools. The maximum credit is $100 in 1983, $200 in 1984, and $300 in 1985 and subsequent years. The maximum credit amount is phased down for taxpayers with adjusted gross incomes of greater than $40,000 and no credit is allowed for taxpayers with adjusted gross income of $50,000 or more. The bill applies to tuition paid or incurred after July 31, 1983, for taxable years ending after that date.

This bill does not provide any new budget authority, but it does provide for a new tax expenditure.

The Congressional Budget office concurs with the estimates provided by the staff of the Joint Committee on Taxation, based on currently available data. The bill will reduce budget receipts and increase tax expenditures by $229 million in fiscal year 1984, $491 million in fiscal year 1985, $703 million in fiscal year 1986, and $726 million in fiscal year 1987.

Sincerely,

ALICE M. RIVLIN, *Director.*

New Budget Authority

In compliance with section 308(a)(1) of the Budget Act, and after consultation with the Director of the Congressional Budget Office, the committee states that the bill does not create new budget authority.

Tax Expenditures

In compliance with section 308(a)(2) of the Budget Act with respect to tax expenditures, and after consultation with the Director of the Congressional Budget Office, the committee makes the following statement.

The bill creates a new tax expenditure by providing a credit against income tax for individuals who pay tuition to eligible educational institutions. The amount of the tax expenditure are shown in Part III, above.

V. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of subsection 4 of Rule XXIX of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill, H.R. 1635, as reported by the committee).

VI. ADDITIONAL VIEWS OF MR. CHAFEE

The federal budget is running a projected deficit of $150 billion for each of the next three fiscal years, according to the Congressional Budget Office. I find it astonishing that when we have spent so much effort in this Committee, and in the Senate, making extremely painful budget cuts and raising taxes, we are now rushing forward to embrace a new program, the cost projections for which are obviously low.

The Treasury spokesmen estimate that this program is going to cost $129 million in fiscal year 1984, $491 million in 1985, $703 million in 1986, and $726 million in 1987—a four-year cost of $2.15 billion. But these estimates are low given the evidence we have regarding the number of students that are currently attending private schools. These estimates do not adequately take into account the incentive to use of private schools that the bill provides. I regret greatly that proponents of this measure have made such an effort to bring it before us now, because plainly we cannot afford it.

The suggestion is that the private schools are in great difficulty; that because of the high cost of tuitions, a large number of children cannot afford them. The statistics do not show that. Yes, the total number of students attending all schools had declined dramatically, but the percentage of children attending private schools has actually increased in the last 10 years.

In 1970, less than 10 percent of the school population attended private schools. In 1980, 10.9 percent of the eligible children were attending private school; that is a 10 percent increase in 10 years. There is no evidence, therefore, that the government needs to underwrite private school attendance.

Finally, I believe that this program is damaging to public education. What will occur—because we know who now attends private schools– will be a stimulus to the so-called "skimming" process. That is, those who are fit, those who can speak good English, those who are not minorities, those who are not poor, will further leave the public school system. The public school system will be left with the handicapped, the immigrants, the minorities, and those children who are disciplinary problems. Statistics on private school attendance now show that none or relatively few of these groups are accepted. These groups are in the public school system, not in the private school system.

Is this a program designed to help the poor? When the credit is available to families with incomes up to $50,000 it is obviously not focused on the poor. Even under this program, 50 percent of the tuition has to be paid by the student or the student's family.

What I believe we are doing is to further the development of two different school systems in the United States: One for the bright, the wealthy, the non-handicapped, and the able; the balance will be

in the public school system. I just do not think that is good for education or for the country.

JOHN H. CHAFEE.

VII. ADDITIONAL VIEWS OF MR. MOYNIHAN

The decision by the Committee to report H.R. 1635, the Educational Opportunity and Equity Act of 1982, represents a significant step toward addressing what I have described to be a "matter of justice" for the over 5 million students currently enrolled in the nation's elementary and secondary nonpublic schools.

Background of Tuition Tax Credit Legislation

I have been a strong proponent of tuition tax credit legislation, having introduced such measures in the 95th, 96th, and 97th Congresses. The first bill I introduced upon coming to the Senate proposed the creation of a tuition tax credit plan not unlike the measure the committee has recommended to the full Senate for enactment. In 1978, Senator Packwood and I chaired three full days of hearings on an elementary, secondary, and postsecondary tuition tax credit measure we had introduced. Tuition tax credit legislation passed the House of Representatives that year and our proposal nearly passed the Senate as well. Senator Packwood and I reintroduced our bill in the 96th Congress but no action was taken on it during that session.

In the opening weeks of the 97th Congress, I introduced an "educational reform package," which was designed to assist both the public schools and the parents of those who choose to send their children to nonpublic schools. I proposed three bills. The first, S. 543, proposed substantial increases over the next decade in general school aid; my second proposal, S. 544, would have reimbursed state and local education agencies for the cost of complying with federal education mandates, the most notable of these perhaps being the Education For All Handicapped Children Act. My third proposal, S. 550, which I introduced with my colleague, Senator Packwood, called for a tuition tax credit program at the elementary, secondary, and postsecondary levels. In June of last year, Senator Packwood and I chaired two days of hearings on S. 550, receiving testimony from a wide array of interested witnesses. And, of course, additional hearings have been held by this committee on S. 2673, the President's tuition tax credit proposal. I regret that the two other education measures which I introduced have not received the same amount of attention and support as has the tuition tax credit plan.

This has not been a business for the short winded. In 1961, I wrote an article for The Reporter, entitled "How Catholics Feel About Federal School Aid." In it, I addressed the upcoming debate over the question of whether federal aid ought to be provided to education. I emphasized that if such aid were to be forthcoming, the question of providing such aid to the Catholic schools (they enrolled at the time over 85 percent of the students attending nonpublic schools at the elementary and secondary levels) would need

be resolved if federal aid to education was to become a reality. As it happened, I was to become further involved with this matter while a member of the administration of President Kennedy. President Kennedy had proposed in 1961, the creation of a $2.3 billion program of grants to states for classroom construction and for increasing teachers' salaries. The President's advisors however opposed making such aid available to church-related schools. Having failed to include provisions for the participation of the church-related schools, the churches opposed the measure and this led in part to it not being approved by Congress. Similar efforts the following two years were unsuccessful as well. In 1964, after extensive negotiations, in which I was the "mediating" party, the issue of federal aid to education including church-related schools was resolved as between the Johnson administration and the advocates of aid to all schools. It fell to me that summer to draft the Democratic Party Platform embodying that agreement. It read:

> New methods of financial aid must be explored, including the channeling of federally collected revenues to all levels of education, and, to the extent permitted by the Constitution, to all schools.

President Johnson signed the Elementary and Secondary Education Act of 1965 on April 11 of that year. Included among its many provisions was a promise that nonpublic schools would receive their fair share of federal assistance provided to education. Title 1 of that Act provides:

> That to the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency has made provision for including special educational services and arrangements (such as dual enrollment educational radio and television, and mobile educational services and equipment) in which such children can participate;

In the main this was intended to mean that Title 1 services, would be provided to needy school children, regardless of where they attended school. Instructional equipment and other aid authorized by the Act was to be treated in a similar fashion. But the promise of 1965 has not been kept. In the 17 years since Congress passed and President Johnson signed that landmark measure into law, participation by the nonpublic sector has never equaled the commitment made. Successive Congresses and adminstrations have been either unable or unwilling to take whatever steps are needed to see that nonpublic schools receive their fair share. Given this history of failed promises, and given what I view as the desirability of encouraging the diversity and pluralism which the nonpublic sector brings to education in this nation, I believe it entirely appropriate for Congress to enact a system of tuition tax credits designed to assist those parents who choose to send their children to nongovernmental schools.

Such assistance has been promised repeatedly in recent years by both the Democratic and Republican Parties and their presidential candidates. In 1972, the Democratic Party Platform said:

> The next Democratic Administration should channel financial aid by a constitutional formula to children in nonpublic schools.

The late Hubert H. Humphrey, while campaigning for his party's nomination for the presidency in 1972 expressed his support:

> I favor the creation of a system where parents would be able to receive a tax credit when their children attend approved private schools.

George S. McGovern in 1972 announced his:

> support of the tax credit approach to aid the parents and children attending parochial and other bona fide nonpublic schools.

More recently, in 1976, the Democratic Party Platform in a plank I drafted stated:

> The Party renews its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in nonsegregated schools in order to insure parental freedom in choosing the best education of their children.

Again, in 1980, both parties committed themselves to aiding the nonpublic schools. The Democratic Platform plank, which again I drafted said:

> Private schools, particularly parochial schools, are also an important part of our diverse educational system. The Party accepts its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in schools which do not racially discriminate and excluding so-called segregation academies.

The Republican Platform said:

> * * * we reaffirm our support for a system of educational assistance based on tax credits that will in part compensate parents for their financial sacrifices in paying tuition at the elementary, secondary, and postsecondary level.

I reiterate this history to make the point that assistance to education, including aid to the nonpublic sector, is a well established idea. It has been endorsed repeatedly by many both in and outside of government. Still, as I have remarked at the hearings Senator Packwood and I have held on this subject over the past 5 years, many remain of the view that the providing of any assistance to nonpublic schools is a concept somehow foreign to the American experience. I believe that our hearings have had substantial educational value in this regard. They have, in my view, dispelled the myth that state aid to private schools is somehow a new concept or that the founding fathers believed that the First Amendment barred any assistance to church-related schools. There is a history here and if our hearings have accomplished anything they have served to establish the important historical and contemporary role that nonpublic schools have played in our society.

Specific Provisions of Tuition Tax Credit Bill

With respect to the specific provisions of S. 2673, as I indicated on the first day of our hearings on this measure, there were two matters which had to be addressed before I would lend my support. First, no student attending a school which practices illegal discrimination would benefit from the availability of tuition tax credits. In my view, the administration bill as introduced was inadequate on that point. The committee, by adopting additional safeguards has greatly improved the bill and has strengthened the chances of the bill's enactment. As amended in Committee, the bill directs the Attorney General upon a finding of good cause to seek declaratory judgments against schools which discriminate. Such an action may be brought in response to complaint of discrimination filed by individuals or upon evidence presented showing that a school is following a racially discriminatory policy. If the Attorney General brings such an action and prevails, the parents of any student attending the school would be ineligible for tuition tax credits. In addition, the tuition tax credit program will not go into effect until it is firmly established that Section 501(c)(3) of the Internal Revenue code requires a school to maintain a racially nondiscriminatory policy. This issue will be decided by either the Supreme Court in connection with cases now before it or, failing that, action by Congress. Second, I have maintained that the tuition tax credit must be refundable so as to benefit low income families who choose to send their children to nonpublic schools. I am pleased that members of the committee share this view and that this matter will be addressed in the form of a committee amendment when H.R 1635 reaches the floor of the Senate.

The committee has taken a number of other actions that, in my view, improve the bill. In recognition of the budget constraints we face, the effective date of the credit has been delayed to July 1983, and the amount of the credit has been reduced from a maximum of $500 to $300. Furthermore, the amount of the credit has been tied to family income. Families with incomes above $40,000 would have their credit reduced; those making $50,000 and above would receive no credit. By providing for a phase-out of the tuition tax credit at higher incomes, the committee has embraced a principle already well established in other federal student financial aid programs.

I would hope that our colleagues in the Senate would review this legislation and the hearings we have held over the past five years. I am confident that having done so, they will agree with the judgment of this committee that tuition tax credits fulfill a promise made when Congress adopted a policy of aid to education and, furthermore, that they work to ensure diversity in education—a trademark of a pluralistic and democratic society.

Daniel Patrick Moynihan.

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